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ABSTRACT

Laws of the 12 states which permit access to records of adoption proceedings without a court order are summarized. Statutes on access to adoption records for all 50 states are presented in tabular form and two recent court cases concerning adoption record access are described. (JMB)

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RESEARCH MONOGRAPH

ACCESS TO ADOPTION RECORDS:

STATUTES IN THE FIFTY STATES

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ACCESS TO ADOPTION RECORDS: STATUTES IN THE FIFTY STATES

The Legislative Research Office was requested by the Interim Committee on the Judiciary to summarize the regulations of the fifty states regarding access to records of adoption proceedings. This monograph, based on a review of the adoption statutes in each state, summarizes those states' laws which permit access without a court order. Two recent court cases concerning the access to records are described.

State Laws

Presently 38 states require a court order showing "good cause" to release any information contained in the records of an adopton proceeding. The remaining 12 states allow certain individuals or agencies to review some or all records without a court order. The 12 exceptions (those not required to obtain a court order) are summarized below.

Alabama - Adoption records may be opened only upon the demand of an adopted child when he or she has attained majority or the adopting parents.

Arizona - Files may be open to inspection by persons and agencies having a legitimate interest in the case (and their attorneys) with permission of court.

California - Files are open to inspection by parties to the action and their attorneys and State Department of Welfare.[1]

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[1]The California Legislature passed a bill in 1976 that would have allowed the Department of Health to arrange a meeting of adopted persons and natural parents when both parties request such a meeting. The Governor vetoed the bill saying:

> Current law allows the courts in cases of necessity and good compelling cause to make available information regarding the birth of children who have been adopted... by bypassing both the protection that the courts now provide all parties in this sensitive area and by ignoring the rights of adoptive parents, this bill would have a chilling effect on adoptions and a disruptive effect on family relationships.

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Connecticut	- Original birth certificate may be examined (1) by written request of adopted person, if 18, (2) by adopting parents, or (3) by court order. Adopting parents or adopted persons may view other records only with permission of court.
Florida	- Records are subject to inspection on written authorization of adoptive parent or adoptive child, if 18.
Kansas	- Adoption records are a public record and open for inspection by any citizen.
Maryland	- Records are opened by written order of the State Board of Health and Mental Hygiene.
Minnesota	- Adopted person, over 21, may request disclosure of the original birth certificate.
Mississippi	- Records may be inspected by officers of the court (including attorneys).
New Mexico	- Files may be reviewed by a court, a department, or any agency which may be party to the adoption proceeding.
South Dakota	- Records may be inspected by adopting parents, their attorneys, the Office of Community Services, or the adopted person (upon reaching maturity).
Virginia	- Files may be reviewed by the adopted person, if 18, and by authorized child-placing agencies.

Table I summarizes the statutes in each of the fifty states regarding access to adoption records.

TABLE I

State Statutes on Access to Adoption Records

State	Access Only By Court Order For Good Cause	Access By Court Order Except For:
Alabama		Child (at majority) or adopting parents.
Alaska	X	
Arizona		Persons with "legitimate interest" (defined by court)
Arkansas	X	
California		Parties to the action/their attorney/ Department of Social Welfare.

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Colorado	X	
Connecticut		Birth Certificate viewed by 18 year old adoptee with written request; Records viewed with permission of court.
Delaware	X	
Florida		Written authorization of adoptive parent or adopted child, if 18.
Georgia	X	
Hawaii	X	
Idaho	X	
Illinois	X	
Indiana	X	
Iowa	X	
Kansas		Adoption records are public record.
Kentucky	X	
Louisiana	X	
Maine	X	
Maryland		Written order of State Board of Health and Mental Hygiene.
Massachusetts	X	
Michigan	X	
Minnesota		Adopted persons over 21 may request disclosure of original birth certificate.
Mississippi		Access to officers of the court, including attorneys.
Missouri	X	
Montana	X	
Nebraska	X	
Nevada	X	
New Hampshire	X	
New Jersey	X	
New Mexico		To department or agency which is party to proceeding.
New York	X	
North Carolina	X	
North Dakota	X	
Ohio	X	
Oklahoma	X	
Oregon	X	
Pennsylvania	X	
Rhode Island	X	

South Carolina	X	
South Dakota		Access by parents by adoption, their attorneys, Office of Community Services, child upon maturity.
Tennessee	X	
Texas	X	
Utah	X	
Vermont	X	
Virginia		Access to child, if eighteen, and authorized child-placing agencies.
Washington	X	
West Virginia	X	
Wisconsin	X	
Wyoming	X	

Case Law

Two recent cases underscore the lack of consensus among the courts in deciding cases of access to records of adoption proceedings. In February 1977, a New Jersey Superior Court ruled that, upon reaching maturity, an adoptee should have easier access to his original birth certificate if he has a deep emotional need to know who his natural parents were.[2] In this case, Mills v. Atlantic City, the New Jersey statute (which provides that sealed records may be opened only upon the order of a court for good cause) was challenged by adopted adults as "abridging their right to privacy and to receive important information." The court countered that this right to privacy is in direct conflict with the right to privacy of the natural parent.

According to the court, the purpose of the New Jersey Adoption Act is to:

> promote policies and procedures socially necessary and desirable for the protection not only of the child placed for adoption but also for the natural and adopting parents.[3]

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[2] Mills v. Atlantic City Department of Vital Statistics, 372 A2d 646.

[3] Mills, p. 649.

In supporting the privacy of natural parents, the court concluded as follows:

> Assured of this privacy by the state, the natural parents are free to move on and attempt to rebuild their lives after what must be a traumatic and emotionally tormenting episode in their lives.

The court also recognized that the state has an active interest in protecting and nurturing the growing family relationship it has statutorily created. The final, determining factor is the adopted child. In the Mills decision, the court said that to the age of maturity responsibility falls upon the child to show good cause that adoption records be opened. Following the age of maturity the burden of proof should shift to the state to demonstrate that good cause is not present.

The court noted instances in which the request for records should be granted:

> Where the natural parent has placed on file a consent to identification with the agency who placed the child, access by the adult adoptee should be automatically allowed.... Requests for medical, hereditary or ethnic background information should be granted, absent some showing of compelling reasons not to reveal the information.

The court added that a "compelling psychological need" to know one's natural parents may constitute the good cause required by New Jersey statutes. They concluded that this, however, is for the courts and adoption agencies to decide. The court said that it is important that each request be referred to an intermediary agency for investigation, report and recommendation to the court. The court found that:

> plaintiffs' right to privacy and to receive important information are not unconstitutionally abridged by [statute] but rather are permissably limited in accordance with a valid state interest to balance conflicting rights of privacy and to protect the integrity of the adoption process which is likely to suffer if the assurances of secrecy are not present.

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A March 1977 case in North Carolina reached a slightly different conclusion.[4]

The Superior Court of Montgomery County decided that an 18 year old adopted child had a right to review records of her adoption because she:

> had a disturbed emotional and mental outlook as a result of not being able to correctly ascertain the true identity of her natural parents.

The Court of Appeals, however, overturned the lower court decision on the grounds that the "disturbed emotional and mental outlook" was not a finding of fact.

North Carolina's statute provides that the original file of an adoption proceeding may be opened only by a court order. The Court of Appeals was of the opinion that the confidentiality required by statute should be protected except in compelling cases. The court said:

> Adoption is favored and encouraged as a matter of public policy. To this end the natural parent or parents must feel secure in the knowledge that their true identity usually will remain confidential. Certainly the assurance of anonymity is an important consideration in the parents' decision to consent to the adoption of their child.

Any conflict between the best interests of the child and the natural or adoptive parents is to be resolved on the basis of what the court determines to be the best interests of the child. The North Carolina decision does not prohibit the opening of adoption records but severly limits the discretion of the courts. The Mills case in New Jersey, on the other hand, permits the court to request a recommendation from the appropriate state agency and asks the agency to prove why the records should not be opened.

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[4] In the Matter of the Adoption of Nancy Margaret Spinks, 32 North Carolina Court of Appeals 422.